

§ 600.415 Access to statistics.

(a) *General.* In determining whether to grant a request for access to confidential data, the following information will be taken into consideration (also see § 600.130):

(1) The specific types of data required.

(2) The relevance of the data to conservation and management issues.

(3) The duration of time access will be required: continuous, infrequent, or one-time.

(4) An explanation of why the availability of aggregate or non-confidential summaries of data from other sources would not satisfy the requested needs.

(b) *Federal employees.* Statistics submitted as a requirement of an FMP and that reveal the identity of the submitter will only be accessible to the following:

(1) Personnel within NMFS responsible for the collection, processing, and storage of the statistics.

(2) Federal employees who are responsible for FMP development, monitoring, and enforcement.

(3) Personnel within NMFS performing research that requires confidential statistics.

(4) Other NOAA personnel on a demonstrable need-to-know basis.

(5) NOAA/NMFS contractors or grantees who require access to confidential statistics to perform functions authorized by a Federal contract or grant.

(c) *State personnel.* Upon written request, confidential statistics will only be accessible if:

(1) State employees demonstrate a need for confidential statistics for use in fishery conservation and management.

(2) The state has entered into a written agreement between the Assistant Administrator and the head of the state's agency that manages marine and/or anadromous fisheries. The agreement shall contain a finding by the Assistant Administrator that the state has confidentiality protection authority comparable to the Magnuson Act and that the state will exercise this authority to limit subsequent access and use of the data to fishery management and monitoring purposes.

(d) *Councils.* Upon written request by the Council Executive Director, access to confidential data will be granted to:

(1) Council employees who are responsible for FMP development and monitoring.

(2) A Council for use by the Council for conservation and management purposes, with the approval of the Assistant Administrator. In addition to the information described in paragraph (a) of this section, the Assistant Administrator will consider the following in deciding whether to grant access:

(i) The possibility that Council members might gain personal or competitive advantage from access to the data.

(ii) The possibility that the suppliers of the data would be placed at a competitive disadvantage by public disclosure of the data at Council meetings or hearings.

(3) A contractor of the Council for use in such analysis or studies necessary for conservation and management purposes, with approval of the Assistant Administrator and execution of an agreement with NMFS as described by NOAA Administrative Order (NAO) 216-100.

(e) *Prohibitions.* Persons having access to these data are prohibited from unauthorized use or disclosure and are subject to the provisions of 18 U.S.C. 1905, 16 U.S.C. 1857, and NOAA/NMFS internal procedures, including NAO 216-100.

§ 600.420 Control system.

(a) The Assistant Administrator maintains a control system to protect the identity of submitters of statistics required by an FMP. The control system:

(1) Identifies those persons who have access to the statistics.

(2) Contains procedures to limit access to confidential data to authorized users.

(3) Provides for safeguarding the data.

(b) This system requires that all persons who have authorized access to the data be informed of the confidentiality of the data. These persons are required to sign a statement that they:

(1) Have been informed that the data are confidential.